

IN THE SUPREME COURT, STATE OF WYOMING

OCTOBER TERM, A.D. 1979

In the Matter of Amending)
Rules 2.01, 2.03, 2.04, 2.06,))
2.09, 3.02, 4.06, 5.06,))
11.01, 12.07, 15 and 16,))
Wyoming Rules of Appellate))
Procedure; Rule 79(b),))
Wyoming Rules of Civil))
Procedure.))

IN THE SUPREME COURT
STATE OF WYOMING

MAR 24 1980

ATTEST
M. J. Cooney
DEPUTY

ORDER

The following amendments to the above numbered rules having been found advisable by the court and the recommendations of the advisory committees on rules having been considered,

IT IS ORDERED that the following Rules of Appellate Procedure be, and they are hereby, amended to read as follows:

- 2.01 - as attached
- 2.03 - as attached
- 2.04 - as attached
- 2.06 - as attached
- 2.09 - as attached
- 3.02 - as attached
- 4.06 - as attached
- 5.06 - as attached
- 11.01 - as attached
- 12.07 - as attached
- 15 - as attached
- 16 - as attached

IT IS FURTHER ORDERED that Rule 79(b) of Wyoming Rules of Civil Procedure be, and it is hereby, amended to read:

"79(b) Other books and records. The clerk of court shall also keep such other books, records, DATA AND STATISTICS as may be required from time to time by the Supreme Court or the judge of the district in which the clerk is acting."

IT IS FURTHER ORDERED that the above amended Rules be published in "Wyoming Court Rules" and become effective on July 1, 1980, which date shall be at least 60 days after such publication and distribution by the publisher; that the amended rules as set out herein shall be spread at length on the journal of this court, but the stricken words of the original rules and the capitalized added words thereof shall not be shown as stricken or capitalized in the publication in Wyoming Court Rules.

Dated at Cheyenne, Wyoming this 24 day of March, 1980.

BY THE COURT:


John F. Raper, Chief Justice

8/28
228

WYOMING RULES OF APPELLATE PROCEDURE

Rule 2.03--Docketing Statement

Within ten (10) days after filing the notice of appeal in the district court, the appellant shall file in the ~~district~~ SUPREME court and serve on all other parties to the appeal a docketing statement which shall contain:

- (1) a statement of the nature of the proceeding below;
- (2) the date of the judgment or order sought to be reviewed and the date the notice of appeal was filed;
- (3) a concise statement of the case containing the facts material to a consideration of the questions presented;
- (4) the questions presented by the appeal, expressed in the terms and circumstances of the case but without unnecessary detail; the statement of questions should be short and concise and should not be repetitious; general conclusory statements such as "the judgment of the trial court is not supported by the law or the facts" will not be accepted;
- (5) a list of cases and authorities believed to support the contentions of the appellant. Argument on the law shall not be included;
- (6) the appellant shall attach to each copy of the docketing statement a copy of the docket entries of the court from which the appeal is taken, a copy of the judgment or order sought to be reviewed, a copy of any opinion or findings, and a copy of the notice of appeal.

Journal
3/28

WYOMING RULES OF APPELLATE PROCEDURE

Rule 2.04--Motion to Dismiss or Affirm

[This Rule is deleted. See WRAP 4.05, 4.06 and 16.]

Journal
3/18

WYOMING RULES OF APPELLATE PROCEDURE

Rule 2.06--Bond on Appeal

Whenever a bond for costs on appeal is required by law, the bond shall be filed or equivalent security shall be deposited with the notice of appeal. ~~The bond shall be in the sum of one hundred dollars, unless the court fixes a different amount or unless a supersedeas bond is filed, in which event no separate bond on appeal is required. The bond on appeal shall have sufficient surety and shall be conditioned to secure the payment of costs if the appeal is dismissed or the judgment affirmed, or of such costs as the appellate court may award if the judgment is modified. If a bond on appeal or equivalent security in the sum of one hundred dollars is given, no approval thereof is necessary. After a bond on appeal is filed an appellee may raise objections as to the form of the bond or to the sufficiency of the surety for determination by the clerk.~~

*Amended
3/17*

WYOMING RULES OF APPELLATE PROCEDURE

Rule 2.09--Failure to file or insufficiency of bond.

If a bond on appeal or a supersedeas bond is not filed within the time specified, or if the bond filed is found insufficient, and if the action is not yet docketed with the supreme court, a bond may be filed at such time before the action is so docketed as may be fixed by the district court. After the action is so docketed, application for leave to file a bond may be made only in the supreme court. IF THE SUPREME COURT DEEMS AN EVIDENTIARY HEARING TO BE NECESSARY IT MAY REMAND THE MATTER TO THE DISTRICT COURT FROM WHICH THE APPEAL IS TAKEN FOR SUCH LIMITED PURPOSE AND UNDER THE TIME CONSTRAINTS FIXED BY THE COURT. THE JUDGE CONDUCTING THE HEARING SHALL MAKE FINDINGS OF FACT AND RECOMMENDATIONS, AND FORWARD THE SAME WITH A TRANSCRIPT OF THE EVIDENCE TAKEN, PROPERLY CERTIFIED, TO THE SUPREME COURT FOR FINAL DETERMINATION.

Journal
317

WYOMING RULES OF APPELLATE PROCEDURE

Rule 3.02--Filing of Record on Appeal.

The appellant shall cause the record on appeal as provided for in WRAP 4 herein to be filed with the supreme court and the appeal to be docketed there within forty (40) days from the date of filing the notice of appeal. The record will be filed and the appeal docketed upon receipt by the clerk of the supreme court, within the period herein provided or within such shorter or longer period as the court may prescribe, of the record on appeal and, unless the appellant is authorized to proceed without payment of fees, of the docket fee fixed by WRAP 10 herein. When more than one appeal is taken from the same judgment, the district court may prescribe the time for filing and docketing, which in no event shall be less than forty (40) days from the date of filing the first notice of appeal. In all cases the district court may extend the time for filing the record and docketing the appeal upon motion of an appellant made within the period for filing and docketing as originally prescribed or as extended by a previous order, or upon its own motion by order entered within such period, but the district court shall not extend the time to a day more than sixty (60) days

from the date of filing the first notice of appeal. The motion of an appellant for an extension shall show that his inability to effect timely filing and docketing is due to causes beyond his control or to circumstances which may be deemed excusable neglect. However, The supreme court on proper application may permit the record on appeal to be later filed and docketed (1) where without fault of the appealing party the necessary transcript of evidence was not made available to the appellant within the time limited for filing and docketing the record on appeal if the appealing party produces written evidence that concurrently with the filing and serving of the notice of appeal such appellant had ordered from and arranged with the court reporter the payment for the transcript of those portions of the evidence deemed necessary for the appeal; AND PROVIDED FURTHER THAT THE APPLICATION FOR EXTENSION IS SUPPORTED BY AN AFFIDAVIT FROM THE RESPONSIBLE REPORTER SETTING FORTH THE PENDING CASES IN WHICH SUCH REPORTER HAS TRANSCRIPTS ORDERED, THE ESTIMATED DATES ON WHICH SUCH TRANSCRIPTS WILL BE COMPLETED, THE REASONS AN EXTENSION IS NECESSARY IN THE CASE IN WHICH THE APPLICATION IS MADE, AND A STATEMENT THAT THE REQUEST FOR EXTENSION HAS BEEN BROUGHT TO THE ATTENTION OF THE DISTRICT JUDGE; or (2) upon a showing satisfactory to the supreme court that diligence was used by counsel for appellant and that, for causes beyond his control, the record on appeal

could not be docketed within the time limited. The district court or the supreme court may require the record to be filed and the appeal to be docketed at any time within the time otherwise provided or fixed.

Journal
329

WYOMING RULES OF APPELLATE PROCEDURE

Rule 4.06--Record for Preliminary Hearing in Supreme Court

If prior to the time the record is transmitted a party, OR THE SUPREME COURT ON ITS OWN MOTION, desires to make ~~in~~ ~~the Supreme Court~~ a motion for dismissal, for a stay pending appeal, for an extension of time within which to complete the record, or for any intermediate order, the clerk at the request OF THE SUPREME COURT OR of any party shall transmit to the Supreme Court such parts of the original record as the parties shall designate.

WYOMING RULES OF APPELLATE PROCEDURE

Rule 5.06--Time for Filing and Serving Briefs

Except as otherwise provided herein, within thirty (30) days after the record on appeal has been filed with the clerk of the supreme court, the appellant shall file with the clerk seven (7) copies of his brief and ~~shall also within that period~~ CONCURRENTLY serve upon or mail to the opposite party or his attorney of record, one copy of such brief. Within thirty (30) days after the ~~filing~~ SERVICE of appellant's brief, the appellee shall file with the clerk seven (7) copies of his brief and ~~shall also within that period~~ CONCURRENTLY serve upon or mail to the opposite party, or his attorney of record, one other copy of such brief. Any reply brief by appellant shall be filed and ~~properly~~ CONCURRENTLY served within ten (10) days after the ~~filing~~ SERVICE of appellee's brief. The court, upon finding that an emergency exists sufficient to justify an earlier maturing of the case for hearing, may, by order, upon application and notice, fix a shorter time for the filing and serving of the brief.

When the proceeding is an automatic review by the Supreme Court of a judgment and sentence of death, as provided by §6-4-103, the appellant, within twenty-five (25) days after certification by the sentencing court of the entire record shall file with the clerk of the Supreme Court seven (7) copies of his brief, and ~~shall also within the period~~ CONCURRENTLY serve upon or mail to the opposite party or its attorney of record one other copy of such brief; and within twenty-five (25) days after the ~~filing~~ SERVICE of appellant's

brief, the appellee shall file with the clerk seven (7) copies of its brief, and ~~shall also within that period~~ CONCURRENTLY serve upon or mail to the opposite party, or his attorney of record, one other copy of such brief.

In worker's compensation cases brought to this court by appeal, the appellant, within fifteen (15) days after the filing of the record on appeal in this court, shall file with the clerk seven (7) copies of his brief, and shall also ~~within that period~~ CONCURRENTLY serve upon or mail to the opposite party or his attorney of record, and, unless it be the attorney general's brief, also serve upon or mail to the attorney general one other copy of such brief; within fifteen (15) days after ~~filing~~ SERVICE of the brief of appellant, the appellee shall file with the clerk seven (7) copies of his brief, and shall also ~~within that period~~ CONCURRENTLY serve upon or mail to the opposite party or his attorney of record one other copy of such brief. Any reply brief by the appellant shall be filed and ~~properly~~ CONCURRENTLY served within ten (10) days after the ~~filing~~ SERVICE of the brief of appellee. Immediately upon receipt of a record on appeal, the clerk shall by letter notify the appellant or his attorney of record, and also the attorney general, of that fact.

Journal
330

WYOMING RULES OF APPELLATE PROCEDURE

Rule 11.01--Power to Answer.

The supreme court may answer questions of law certified to it by ~~the Supreme Court of the United States, a court of appeals of the United States, a United States District Court, or United States court of claims,~~ A FEDERAL COURT when requested by the certifying court, if there is involved in any proceeding before it a question of law of this state which may be determinative of the cause then pending in the certifying court and as to which it appears to the certifying court there is no controlling precedent in the decisions of the supreme court.

711. In the matter of certified question from the U.S. Dist. Ct. Dist. of Wyo., James Davis Hanchey vs. Sue F. Steighmer 549 P2 1310 (1976)

Journal
330

WYOMING RULES OF APPELLATE PROCEDURE

Rule 12.07--Record.

Within thirty (30) days after the service of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceedings under review AND A SEPARATE LETTER OF TRANSMITTAL MARKED FOR THE PERSONAL ATTENTION OF THE JUDGE OR JUDGES OF THE REVIEWING COURT. CONCURRENTLY WITH TRANSMITTING THE RECORD, THE AGENCY SHALL SERVE NOTICE OF THE TRANSMITTAL ON ALL PARTIES. The record in a contested case shall consist of the matter required by section 9-4-107(o), W.S. 1977 of the Wyoming Administrative Procedure Act. To the extent that any matter so required was not preserved by the agency, and there is no record thereof, the court may take evidence of the matter. The record in all other cases shall consist of the appropriate agency documents reflecting the agency action and the basis thereof. By stipulation of all parties to the review proceedings, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional cost. The court may require or permit subsequent additions or corrections to the record. A record remanded by a court to an agency for any reason or purpose may be recalled by the remanding court as necessary upon its own motion (sua sponte).

Amended
330

WYOMING RULES OF APPELLATE PROCEDURE

Rule 15. Petition for Reinstatement

An application for reinstatement of a case in the supreme court, after dismissal thereof, shall be by petition to the court, signed by counsel, stating the reasons therefor, and supported by such showing, in writing, as may be necessary. Such petition and six copies thereof shall be filed within ~~thirty-(30)~~ TEN (10) days after the order of dismissal has been made, and shall be accompanied by seven copies of a brief containing the points and authorities upon which petitioner relies. A copy of such petition, as well as of the brief, shall also within the time above specified be served on the counsel for the opposing party who may have appeared in this court in the case. Counsel for such opposing party shall have ~~thirty-(30)~~ TEN (10) days after such service within which to file with the court his objections to such petition together with seven copies of a brief covering the points and authorities upon which he relies and serve upon counsel for the petitioner a copy of said objections and brief. There shall be no oral argument on such petition and the objections thereto, unless requested by the court.

Page 30

WYOMING RULES OF APPELLATE PROCEDURE

Rule 16. MOTIONS

Motions ~~7-ether-than-these-under-Rule-2.047~~ submitted to the supreme court shall be filed with the clerk in seven copies. Prior to the filing, a copy of the motion shall be served on the adverse party or his attorney of record. A motion directed to subject matter which may substantially affect the disposition of a case shall at the time of filing be supported by a memorandum of points and authorities in seven copies. Such memorandum shall prior to the filing be served upon the adverse party or his attorney of record who within ten (10) days after such service may file and serve similar memorandum. The court may resolve a motion without oral argument or may order a hearing. All motions not previously determined shall stand for hearing or submission at the time regularly assigned for the hearing of the case. ALL MOTIONS FILED IN THE SUPREME COURT SHALL BE TYPEWRITTEN ON PAGES NOT WIDER THAN 8 1/2 INCHES NOR LONGER THAN 11 INCHES, AND SHALL BE DOUBLE-SPACED (EXCEPT QUOTATIONS) AND IN NO SMALLER TYPE THAN PICA.

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327-318

A37

WYOMING RULES OF APPELLATE PROCEDURE

Rule 2.01--How and When Taken

An appeal, civil or criminal, permitted by law from a district court to the supreme court, shall be taken by filing a notice of appeal with the clerk of the district court within fifteen (15) days from entry of the judgment or final order appealed from and CONCURRENTLY serving the same in accordance with the provisions of Rule 5 W.R.C.P., unless a different time is provided by law, except that: (1) upon a showing of excusable neglect the district court in any action may extend the time for filing the notice of appeal not exceeding fifteen (15) days from the expiration of the original time prescribed herein, PROVIDED THE APPLICATION FOR EXTENSION OF TIME IS FILED AND THE ORDER ENTERED PRIOR TO THE EXPIRATION OF THIRTY (30) DAYS FROM ENTRY OF JUDGMENT OR FINAL ORDER APPEALED FROM; APPELLANT SHALL BE RESPONSIBLE FOR PROMPTLY SERVING THE APPELLEE WITH A COPY OF THE ORDER EXTENDING THE TIME; (2) if a timely notice of appeal is filed by a party, any party may file a notice of appeal within fifteen (15) days of the date on which the first notice of appeal was filed, or within the time otherwise prescribed herein, whichever period last expires. The running of the

time for appeal in a civil case is terminated as to all parties by a timely motion made by any party pursuant to any of the rules hereinafter enumerated, and the full time for appeal commences to run and is to be computed from the entry of any of the following orders made upon timely motion under such rules, or when such motions are deemed denied; granting or denying a motion for judgment under Rule 50(b), W.R.C.P.; granting or denying a motion under Rule 52(b), W.R.C.P., to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; granting or denying a motion under Rule 59, W.R.C.P., to alter or amend the judgment; or denying a motion for a new trial under Rule 59, W.R.C.P.

In a criminal case, if timely motion in arrest of judgment, Rule 35 W.R.Cr.P.; for a new trial, Rule 34 W.R.Cr.P.; for acquittal, Rule 30(c) W.R.Cr.P. is made, the running of the time for appeal is terminated, and the full time commences to run and is computed from entry of any order denying said motion or when such motions are deemed denied.

A notice of appeal, in a civil or criminal case, filed prematurely shall be treated as filed on the same day as entry of judgment or final order, provided it complies with Rule 2.02, WRAP.

Concurrently with filing the notice of appeal, the appellant shall order and EITHER arrange for the payment of a

transcript of the portions of the evidence deemed necessary
for the appeal OR MAKE APPLICATION FOR PAYMENT THEREOF AS
PROVIDED IN WRAP 10.6; ~~and-written-evidence~~ A CERTIFICATE OF
~~the~~ compliance THEREWITH ~~with-the-requirement~~ shall be filed
in the case or endorsed upon the notice of appeal. If an
appeal has not been docketed, the parties, with the
approval of the district court, may dismiss the appeal by
stipulation filed in that court, or that court may dismiss
the appeal upon motion and notice by the appellant.

*Should
S. 1111
case*